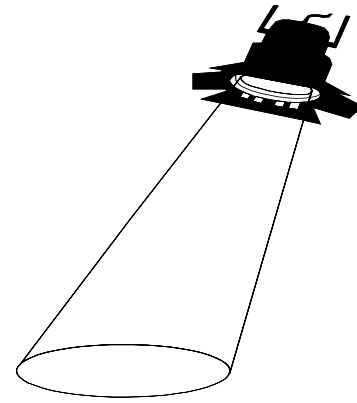




The University of Tennessee  
County Technical Assistance Service

## **SPOTLIGHT on CURRENT ISSUES**

Executive Director's Memo  
March 27, 2002



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### **MILITARY DISCHARGES: MAY THESE RECORDS BE REMOVED?**

Recently, several Registers of Deeds have asked whether the Register has authority under the law to remove a military discharge recorded in the Register's office. *Our research does not reveal any authority for the Register to remove such a record.* A summary of our research follows.

Counties are political subdivisions of the state and thus have no authority except that expressly given or necessarily implied from state law. *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567 (Tenn. Ct. App. 1994). We do not find any statutory authority granted to the Register or to the county legislative body that would allow a Register to remove a record that was filed and recorded correctly. Indeed, Registers have a positive statutory duty to preserve the records of the office. T.C.A. § 8-13-115. Also, there is no authority to treat a military discharge recorded in the Register's office as confidential. Under T.C.A. § 10-7-503, county records that are not listed as confidential by T.C.A. § 10-7-504 or some other statute are open for public inspection. Records of military discharge are not listed in T.C.A. § 10-7-504 or any other state statute as confidential.

Some recent publications from veterans' groups have expressed concern about disclosure of social security numbers. There are restrictions in state and federal laws concerning disclosure of these numbers in certain circumstances, such as when the number is requested for employment or other informational purposes by the state or local government. T.C.A. § 10-7-504(f). However, military discharge forms are recorded in the Register's office voluntarily and these disclosure restriction laws do not apply in this situation. An exception to Tennessee's Public Records Act restricts disclosure of social security numbers when held by state agencies, but counties do not come within the coverage of this act. T.C.A. § 4-4-125. Some veterans' publications have mentioned the federal Privacy Act. The Privacy Act generally prohibits federal agencies from disclosing a record without the consent of the individual to whom the record pertains. 76 C.J.S., *Records* § 76. This part of the Privacy Act does not apply to the Register's office since it is not a federal agency. However, the Privacy Act also generally restrains state and local government agencies from denying an individual a right, benefit or privilege to which he or she is otherwise entitled because the individual refuses to disclose his or her social security number, with some exceptions. 5 U.S.C. § 552a Note, § 7; *Op. Tenn. Atty. Gen.* 02-016 (February 6, 2002). Since the voluntary recording of a military discharge does not involve a refusal to disclose or a request for this information, the Privacy Act is not violated by the Register providing public access to 2 military discharge recorded voluntarily by the veteran

The federal social security laws also deal with the privacy issue regarding the social security account number. This act states in part at 42 U.S.C. § 405(c)(2),(C)(viii)(I) as follows:

Social Security numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law *enacted on or after October 1, 1990*, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

The key phrase is "enacted on or after October 1, 1990." Tennessee recording laws codified at T.C.A. § 66-24-101 listed discharges of military personnel among the writings eligible for registration many decades before October 1, 1990. Accordingly, military discharges recorded in the Register's office are not subject to this federal social security law. Therefore, it is our opinion that Registers do not presently have the authority to remove a military discharge recorded in Register's office or redact the social security number in such a record from public observation. For Registers to have such authority, the state law would have to be amended.

**NOTE:** At the recent meeting of the Registers Association a question arose as to whether state law requires the Register's certification on a recorded document (stamp) to include the book and page or other reference where it is recorded in the notebook as well as where filed or recorded. The answer is yes. T.C.A. § 8-13-108(a)(6).

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